

Danske Bank A/S  
For the attention of the Executive Board

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## **Reprimands for inadequacies in relation to investment advice and suitability tests in Danske Bank's digital investment solution, June**

### **Decision**

The Danish Financial Supervisory Authority (the FSA) has investigated how Danske Bank A/S (Danske Bank or the bank) performs suitability tests in its June investment solution.

Against this background, the FSA issues a reprimand for the following inadequacies in the investment advice and suitability tests in June:

Danske Bank did not collect reliable information about the customer's investment horizon and did not ensure that June was suitable for collecting this customer information in accordance with section 10(1)(3) of the Danish Executive Order on Investor Protection<sup>1</sup>, as elaborated in article 54(7)(b) of Commission Delegated Regulation (EU) No. 2017/565 of 25 April 2016 (the Regulation)<sup>2</sup>.

Danske Bank did not collect the necessary information about the customer's knowledge of the relevant investment area and did not include this information in the assessment of what investment recommendation the customer should be given in accordance with section 10(1)(1) of the Danish Executive Order on Investor Protection.

Danske Bank did not ensure the reliability of the information received from customers in June and did not have procedures capable of identifying relevant obvious inaccuracies in accordance with article 54(7)(d) of the Regulation (see section 3 of the Danish Executive Order on Investor Protection).

Danske Bank did not assess whether the financial instrument recommended was suitable for the customer on the basis of the customer's individual circumstances in accordance with section 3 of the Danish Executive Order on Investor Protection, including whether it was appropriate for the customer to invest in a financial instrument that is subject to taxation on a mark-to-market basis.

The FSA issues a reprimand for the matters mentioned above since Danske Bank has submitted a statement explaining that the inadequacies in question have been addressed so that June, in these respects, now complies with current legislation.

### **About the investigation**

In the autumn of 2017, the FSA conducted an investigation of Danske Bank's digital investment solution, June, that focused on the bank's compliance with the rules on performance of suitability tests.

As a securities dealer, Danske Bank is required to comply with the rules of Danish Executive Order No. 747 of 7 June 2017 on Investor Protection in connection with Securities Trading (the Danish Executive

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<sup>1</sup> Executive Order No. 747 of 7 June 2017 on Investor Protection in connection with Securities Trading.

<sup>2</sup> Commission Delegated Regulation (EU) No. 2017/565 of 25 April 2016 supplementing Directive No. 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

Order on Investor Protection) and the Commission Delegated Regulation (EU) No. 2017/565 of 25 April 2016 (the Regulation).

On 17 October 2017, the FSA requested that Danske Bank submit a statement on how June complies with the rules set out in the Danish Executive Order on Investor Protection. For instance, the bank was asked to prepare a statement on the advice that customers receive through June and what information the bank collects from the customer for the purpose of performing a suitability test.

On 9 November 2017, Danske Bank submitted its statement and submitted a supplementary statement on 7 December 2017.

After having had this decision for commenting, Danske Bank states in its response of 14 March 2018 and in a follow-up of 5 April 2018 that it has now made changes in June to address the inadequacies established by the FSA.

### **Rules**

Pursuant to section 3 of the Danish Executive Order on Investor Protection, a securities dealer must act fairly, honestly and professionally and in the best interest of its customers.

The guidelines<sup>3</sup> to the Danish Executive Order on Investor Protection specify in relation to this general clause that the obligation to act honestly and professionally means that the securities dealer, as part of its advice, must include the consequences of the tax rules that are of relevance to the customer in relation to the products and services covered by the advice or refer the customer to advice elsewhere in this respect.

Pursuant to section 10 of the Danish Executive Order on Investor Protection, when a securities dealer offers investment advice or performs portfolio management, the securities dealer must collect the necessary information about the customer in order for the securities dealer to recommend to the customer the investment that is most suitable for the customer. Pursuant to section 10(1)(1)-(3), the securities dealer must collect the necessary information about the customer's knowledge and experience, respectively, in the relevant investment area, financial situation and the customer's investment objectives.

Article 54 of Commission Delegated Regulation (EU) No. 2017/565 of 25 April 2016 (the Regulation) contains more specific provisions on what information the securities dealer must collect for the purpose of the suitability test. Pursuant to article 54(5), the securities dealer must collect information about the customer's investment objectives, including time horizon, risk-taking preferences, risk profile and the purposes of the investment.

Pursuant to article 54(7), the securities dealer must take reasonable steps to ensure that the information collected is reliable. This means, for example, that all tools used in the suitability assessment must be fit for the purpose and be appropriately designed for use in connection with the customers as all limitations must be identified and actively mitigated as part of the suitability assessment process (see article 54(7)(b)). It also means that the securities dealer must take appropriate steps to ensure the consistency of customer information, for example by considering whether there are any obvious inaccuracies in the information provided by the customers (see article 54(7)(d)).

### **General information about June**

In its statement of 9 November 2017, Danske Bank provides the following general information about June:

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<sup>3</sup> Guidelines No. 88 of 18 July 2011 to the Danish Executive Order on Investor Protection in connection with Securities Trading.

*“It is only possible to become a customer in June via the website [june.dk](http://june.dk), which is also the primary marketing channel. The process of creation and agreement comprises four overall elements:*

- *Information for the customer about June, investment and the June funds, including costs.*
- *Investment recommendation on the basis of information provided by the customer.*
- *Customer creation, including collection of information pursuant to the Danish Act on Measures to Prevent Money Laundering and Financing of Terrorism.*
- *Presentation of agreement text and signature using NemID.”*

The customer’s process through June is also described in the enclosed material, which includes screenshots from June. When a customer has created a user profile in June, the following process description is given to the customer:

“Getting started

- *Read briefly about June and answer three questions about your investment.*
- *Answer seven simple questions about your finances.*
- *View the investment that June recommends to you and for your finances.*
- *Use NemID to create your June account and transfer the amount that you want to invest.”*

In June, one of five investment funds can be recommended to the customer. The funds are UCITS investment funds domiciled in Luxembourg. Each sub-fund invests in a number of external ETFs. Investments made through June are subject to taxation on a mark-to-market basis.

Danske Bank applies a recommendation matrix to determine the specific recommendation to be given to the customer. The matrix comprises the following three criteria: the customer’s capacity for loss, time horizon and risk-taking preferences. On the basis of a combination of these three criteria, the investment recommendation to the customer is determined.

According to the bank’s statement, 20,637 people had received an investment recommendation by 27 October 2017 and 8,350 people had made an investment.

Below follows a review of the inadequacies in June established by the FSA during its investigation.

### **1. Collection of information about the customer’s investment objectives**

As outlined above, the customer must answer three questions about the investment and seven questions about the customer’s finances. The customer’s capacity for loss is calculated on the basis of the seven questions about the customer’s finances. It forms part of the assessment of what recommendation should be given to the customer.

The customer is asked the following three questions about the investment:

1. *“To begin with, we would like to know how much you expect to invest now.”*
2. *“Investments must be given time to develop. When do you expect you will be needing the money?”*
3. *“Investment always involves a risk. How high a risk do you feel comfortable taking?”*

The following options are available to the customer for question number 2 about the customer’s time horizon:

- *“3-7 years”*
- *“7-15 years”*
- *“More than 15 years”*

According to Danske Bank's statement of 9 November 2017, the customer was not able to specify a time horizon of less than three years, and the customer did not receive information saying that it is not appropriate to invest through June if the customer's investment horizon is less than three years.

Danske Bank explains that it does not consider a time horizon of less than three years relevant to investment through June, and its recommendation matrix says that customers with a time horizon of less than three years will not be given an investment recommendation.

In its response of 14 March 2018, Danske Bank states that it has added an option for a time horizon of "0-3 years" and that it now informs customers that Danske Bank does not recommend investments through June for this time horizon.

### The FSA's assessment

The FSA finds that, when collecting information about the customer's investment horizon (see article 54(5) of the Regulation), Danske Bank, prior to the change now implemented, limited the customer's options so that it was not possible for the customer to indicate a time horizon of less than three years. Thus, customers with an investment horizon of less than three years would either have to choose an inaccurate time horizon or come to the conclusion that investing through June was not appropriate.

Against this background, the FSA finds that June, prior to the change, was not designed in a manner so that the tool was suitable for collecting information about the customer's investment horizon, and that Danske Bank, pursuant to section 10(1)(3) of the Danish Executive Order on Investor Protection, did not sufficiently collect the necessary information about the customer's investment objectives and did not ensure the reliability of the collected customer information as required in article 54(7)(b) of the Regulation.

As a consequence, the FSA reprimands Danske Bank for not having ensured, prior to the change of June, that it collected reliable information about the customer's time horizon when the customer received advice through June, and for not having ensured that June was suitable for collecting this customer information in accordance with section 10(1)(3) of the Danish Executive Order on Investor Protection, as elaborated in article 54(7)(b) of the Regulation.

## **2. Assessment of the customer's knowledge**

The following paragraph appeared in the bank's statement of 9 November 2017 on its assessment of the customer's knowledge of the financial instruments in question:

*"June has been developed to be simple and accessible to anyone wanting to invest, regardless of level of experience. The solution has therefore been designed on the assumption that no users have knowledge or experience of UCITS investment funds, which, see above, are the only products in which investment can be made through June."*

So Danske Bank did not make any individual assessment of the customer's knowledge of investment in UCITS funds. The bank also wrote:

*"Danske Bank is of the opinion that customers with the given information are provided with such knowledge of the investments currently used in June and the related risk that – also in consideration of proportionality – there is no need to collect information about whether the customer already has knowledge and experience of investment funds."*

In its response of 14 March 2018, Danske Bank states that it has subsequently added a number of questions to ensure that customers understand the most important characteristics of the financial instruments on which June is based. The user must give the right answers to be able to proceed in June.

### The FSA's assessment

One purpose of the obligation to collect information about the customer's knowledge of a financial instrument is to ensure that the securities dealer has a clear picture of the customer's financial understanding in relation to the product and service so that the advice can be based on the customer's individual circumstances.

Even in consideration of proportionality, the FSA is of the opinion that replacing this obligation with a production description for the customers that is based on a general assumption of their total knowledge in the investment area in question is not permitted.

Instead, the product information should be used for the purpose of giving the customer sufficient knowledge of the product in cases where the assessment of the customer's knowledge has shown that the customer does not have sufficient knowledge of the characteristics and risks of the product.

Moreover, the FSA assesses that the procedure in June where customers, prior to the change, received product information by default entailed the risk that customers just "clicked" their way through without reading and understanding the product information.

Against this background, the FSA finds that Danske Bank, prior to the change, did not comply with section 10(1)(1) of the Danish Executive Order on Investor Protection since the bank had not ensured that the customer had sufficient knowledge in the relevant investment area to allow the bank to recommend the securities trade and the financial instruments that were suitable for the customer.

As a consequence, the FSA reprimands Danske Bank for not having collected, prior to the change, the necessary information about the customer's knowledge in the relevant investment area when the customer received advice through June, and for not having included this in the assessment of the investment recommendation to be given to the customer.

### **3. Validation of data and identification of obvious inaccuracies**

The FSA asked Danske Bank to explain how the bank ensures that the information collected about customers is reliable and how the bank handles obvious inaccuracies in customer information.

The bank writes the following about its validation of data:

*"When the customer's age is known (in connection with the subsequent establishment of the customer relationship), it is compared to the investment horizon chosen for the investment. If the customer is more than 70 years old and has chosen a time horizon of more than 15 years, or if the customer is more than 75 years old and has chosen a time horizon of more than seven years, the customer will be contacted subsequently by telephone to ensure that the time horizon chosen is correct.*

*In addition to the above, the bank is developing additional automatic checks of customer information to identify obvious inaccuracies when the customer provides information about its finances."*

In its response of 14 March 2018, the bank states that financial information entered by users has been validated as from 21 December 2017. The bank explains that validation takes place in that data entered by the user are checked in relation to a number of typical situations identified (based on statistical correlations between income, debt and investment, for example). The bank explains that this process increases the certainty that the financial information is correct.

### The FSA's assessment

The FSA finds that it is important that automatic advice services focus on ensuring that the information provided by the customer is reliable, and that the information is checked for obvious inaccuracies. At

no point is the customer in contact with an adviser who can ask supplementary or clarifying questions about the information provided by the customer.

In June, particularly the calculation of the customer's capacity for loss is a key element since the investment recommendation is, for instance, determined on this basis. However, according to the bank's statement, the bank, prior to the changes implemented, did not have special mechanisms to ensure that the financial information provided by the customers was correct or other mechanisms to identify obvious inaccuracies in the financial information. Thus, according to the bank's statement, the bank had only automatic checks of the customer's age combined with the time horizon chosen. Furthermore, before December 2017, June had no other automatic checks to identify obvious inaccuracies in the information provided by the customer.

Against this background, the FSA finds that Danske Bank was in contravention of article 54(7)(d) of the Regulation and thus of section 3 of the Danish Executive Order on Investor Protection because it had not taken further steps to ensure the reliability of the information provided by the customer and because it did not have sufficient systems capable of identifying relevant obvious inaccuracies.

The FSA issues a reprimand in this respect.

#### **4. Identification of customers for whom the financial instrument is not suitable**

In its statement, Danske Bank says that the customer will be contacted in writing or by telephone if the customer's investment exceeds specific maximum amounts. In this respect, the bank writes as follows:

*“Customers whose investment in June (from the beginning or later) exceeds DKK 300,000 will receive an e-mail saying that other investment solutions of Danske Bank may be of interest.”*

The bank submitted an example of such e-mail. The e-mail points out to the customer that the tax effects of the investment will be greater as the investment increases. The customer is recommended to read more about this on the bank's website and is informed of the possibility of receiving tax advice by contacting an independent tax adviser. The bank also points out to the customer that Danske Bank offers investment solutions other than June and that these may be of interest to the customer as the investment amount increases.

The bank's statement says the following about contact with customers whose investments in June exceed DKK 600,000:

*“Customers whose investments in June (from the beginning or later) exceed DKK 600,000 will receive a telephone call from an investment adviser to ensure that the customer's choice of June is appropriate.”*

The bank submitted an example of the e-mail forwarded automatically to investment advisers saying that the customer must be contacted by telephone. The e-mail says as follows:

*“... The customer must be called to ensure that the customer is aware of the tax treatment (taxation on a mark-to-market basis and capital income) and to assess whether other investment products of the bank would be more relevant.”*

In its supplementary statement of 7 December 2017, the banks states the two primary purposes of this telephone call:

- “• Determine whether other investment products of the bank are more suitable for the customer than June and inform the customer of the options.*
- Ensure that the customer knows how an investment in June is taxed.”*

In its response of 14 March 2018, Danske Bank states that, as from 26 February 2018, the system includes an additional question to determine whether the customer receives public benefits as well as information for the customer about the potential consequences of making investments if the customer receives public benefits.

#### The FSA's assessment

When a securities dealer offers investment advice, the securities dealer issues a specific recommendation to a customer personally about transactions in specific financial instruments. Because the recommendation is personal, the securities dealer must base the recommendation on the customer's individual circumstances. As stated above, the obligation to act honestly and loyally means that the securities dealer must include, in its advice, the consequences of the tax rules that are relevant to the customer and the products and services that are the subject of the advice.

Danske Bank states that, prior to the changes implemented, the assessment of whether the transaction is suitable for the customer was based on the bank's recommendation matrices and the information entered by the customer, including the customer's combination of capacity for loss, time horizon and risk-taking preferences. So Danske Bank assessed that UCITS investment funds were suitable financial instruments for all customers meeting the criteria in June to receive an investment recommendation.

The FSA considers it a problem that the bank, prior to the changes implemented, did not include relevant individual circumstances in the assessment of whether the specific financial instrument was suitable for the customer. For example, it should be considered whether UCITS investment funds that are subject to taxation on a mark-to-market basis should be recommended to all customers. It should be considered, for instance, whether UCITS investment funds are suitable for customers receiving public benefits, which may be subject to set-off if the income of the individual person rises above a certain level, including old-age pensioners receiving a pension supplement. For the purpose of ensuring that relevant and adequate advice is provided to these customers, June should have been designed in such a manner as to take into account whether investment in financial instruments where also unrealised gains and losses for the year are regarded as income is in the best interest of the customer.

As a consequence, the FSA is of the opinion that Danske Bank previously did not sufficiently include the customer's individual circumstances in the assessment of whether the financial instrument was suitable for the customer. The FSA finds that this is in contravention of section 3 of the Danish Executive Order on Investor Protection.

The FSA issues a reprimand in this respect.

#### **Complaints procedure**

In accordance with section 372(1) of the Danish Financial Business Act, decisions made by the FSA may be brought before the Danish Company Appeals Board by e-mail to ean@naevneneshus.dk or by letter to the Danish Company Appeals Board, Toldboden 2, DK-8800 Viborg, tel. + 45 72 40 56 00, no later than four weeks after the receipt of such decisions.

In accordance with section 7 of the Danish Executive Order on the Company Appeals Board of the Danish Ministry of Industry, Business and Financial Affairs, complaints made to the Company Appeals Board are subject to a fee of DKK 4,000. However, if the complaint does not concern current or future business matters of the complainant, the fee is DKK 2,000. In accordance with section 15(4) of the executive order, the Board or its chairman on its behalf may decide to refund the fee paid in full or in part in the event that the complainant's claim is upheld in full or in part. The fee is refunded if the Board decides not to consider the complaint.

#### **Publication**

It follows from section 354b of the Danish Financial Business Act that the FSA must inform the public about cases dealt with by the FSA and which are of public interest. The FSA finds that this case is of public interest, and the decision will therefore be published on the FSA's website.

Yours faithfully

Ulla Brøns Petersen  
Director

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